

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

**IN RE: VALSARTAN PRODUCTS
LIABILITY LITIGATION**

CIVIL ACTION NUMBER:

19-md-02875-RBK-JS

**TELEPHONIC STATUS
CONFERENCE WITH ORAL
ARGUMENT AND RULINGS**

Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101
January 13, 2021
Commencing at 4:00 p.m.

B E F O R E:

**THE HONORABLE JOEL SCHNEIDER,
UNITED STATES MAGISTRATE JUDGE**

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Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

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Special Master
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1 (PROCEEDINGS held in open court before The Honorable Joel
2 Schneider, United States Magistrate Judge, at 4:00 p.m.)

3 THE COURT: Good afternoon, everyone. This is Judge
4 Schneider. We're on the record in the Valsartan MDL, Docket
5 Number 19-2875. There's more than 40 people on the phone. If
6 you're not speaking, can you please put your phone on mute.
7 Anyone who wants to put their appearance on the record is
8 welcome to, but for the time being, just the people who expect
9 to speak put your names on the record.

10 And last, for the benefit of the court reporter, if
11 you are going to speak this afternoon, please announce your
12 name first so the court reporter knows who's speaking.

13 Let's start with appearances for the plaintiffs.

14 MR. SLATER: Hello, Your Honor. Adam Slater for the
15 plaintiffs.

16 MS. WHITELEY: Good afternoon, Your Honor. Conlee
17 Whiteley on behalf of plaintiffs.

18 MR. NIGH: Good afternoon, Your Honor. Daniel Nigh on
19 behalf of plaintiffs.

20 THE COURT: Defendants.

21 MR. GOLDBERG: Good afternoon, Your Honor. This is
22 Seth Goldberg on behalf of ZHP parties and defendants.

23 MS. COHEN: Good afternoon, Your Honor. This is Lori
24 Cohen with Greenberg Traurig, and Victoria Lockard is on as
25 well, on behalf of the Teva defendants and the Executive

1 Committee.

2 MR. TRISCHLER: Good afternoon, Your Honor. Clem
3 Trischler for the Mylan defendant and the Defense Group.

4 MS. JOHNSTON: Good afternoon, Your Honor. Sarah
5 Johnston on behalf of the retailer and pharmacy defendants as
6 well as CVS Pharmacy, Inc., and Rite Aid Corporation.

7 MR. GEOPPINGER: Good afternoon, Your Honor. Jeffrey
8 Geoppinger on behalf of the wholesaler defendants and
9 AmerisourceBergen.

10 THE COURT: All right, counsel, this is what I have
11 planned for this afternoon. I'd like to address all of the
12 issues in the parties' recent letters, the Court has read them,
13 understands the issues, then open the floor up to address any
14 other issue anyone else wants to raise and then I'm going to
15 excuse myself from the call. The Special Master should be on
16 the call and I'll let you speak with him after I excuse myself
17 from the call.

18 The first thing I'd like to do on this call is just
19 to identify what I believe to be the outstanding issues, none
20 of which I am going to address today but I thought it would be
21 a good opportunity to just put a placeholder what is
22 outstanding. So these are the issues that I'm aware need to be
23 addressed that will not be addressed today or by this Court.

24 One is the various motions to amend, they're
25 outstanding. Really, the main event is plaintiffs' motion to

1 amend dealing with the named plaintiffs.

2 Two, as set forth in my recent letter, the dispute as
3 to whether ZHP has to produce voluntarily the disputed
4 witnesses for deposition; i.e., whether they're managing
5 agents, there is a briefing schedule for that issue.

6 Third, another issue that was listed in my recent
7 order, there's a briefing schedule for, which is whether or not
8 the defendants have a duty to produce documents from their
9 foreign subsidiaries, i.e., whether they possess control, what
10 have you, the foreign subsidiary's documents.

11 Four, the remaining third-party subpoena document
12 issues that are still outstanding.

13 And five, the proposed schedule that the parties
14 agreed to that you forwarded to Judge Kugler and I presume
15 Judge Kugler's going to deal with that issue. I haven't heard
16 from Judge Kugler on that issue, candidly. I expect that the
17 schedule the parties proposed is going to be approved, but I
18 certainly am not going to make that decision; and, like I said,
19 I haven't spoken to Judge Kugler about it but I would
20 anticipate in due course that's going to be granted.

21 So those are the issues that are not going to be
22 addressed and decided today, which now takes us to the parties'
23 letters.

24 The main event, of course, is the scheduling of the
25 different depositions and the length of the parties' 30(b)(6)

1 depositions. What I would like to do is get all the other
2 issues out of the way and save that issue for last because that
3 is the most weighty or meaty issue we have to deal with today.

4 So the first issue I would like to deal with is the
5 issue regarding who's going to bear the cost of the records
6 that are being obtained by defendants' vendor. I have a
7 question about that. I'm not sure who's going to answer it
8 today but my question is, is there some type of document
9 repository set up or to be set up in this case where the
10 records that are being obtained from these various third
11 parties are going to be kept and if someone wants access to
12 them, they'll have to request that? Can someone speak to what
13 type of repository is being set up?

14 MS. LOCKARD: Your Honor, hello. This is Victoria
15 Lockard from Greenberg Traurig on behalf of Teva and the
16 Executive Committee.

17 Yes. The short answer is yes. So the defendants
18 collectively have entered into an engagement with a vendor by
19 the name of Marker, M-A-R-K-E-R, for collection of these
20 records. And so the process is that the authorizations are
21 provided to Marker. They are collecting the records and
22 hosting them on a secure portal. That portal is accessible to
23 any of the defendants currently and will be made accessible to
24 the plaintiffs for a cost. So there is a cost associated with
25 collecting the records. That cost, the collection costs, are

1 being split among any party who wants access to the records.
2 And then, as is typically done, there's a reproduction or -- or
3 a per-page cost for parties who then download those records
4 from that portal.

5 So we have discussed with Marker and discussed with
6 plaintiffs that, you know, we -- we would expect plaintiffs to
7 operate under the same arrangement that all of the defendants
8 do so that, you know, it's exactly the same for defendants and
9 plaintiffs. They will have access to the portal and pay the
10 same cost. And this would not be a 50/50, in other words,
11 defendants paying collectively half and plaintiffs paying
12 collectively half. Rather, it would be I guess more of a I
13 guess that's per stirpes, I don't know, but if there are five
14 defendants downloading the records plus plaintiffs, then
15 plaintiffs would only have to pay for one-sixth of those; and
16 as additional parties download more documents, then credits are
17 assigned among the participating parties. So that's how it's
18 set up to work currently.

19 THE COURT: Thank you, counsel.

20 This is the Court's ruling on the records issue. I
21 read the briefs, I'm familiar with the issue and I don't think
22 that we need further argument on it.

23 This exact issue came up in the *Benicar* case. The
24 Court issued an order in that case. The Court is going to
25 incorporate, by reference, its March 18, 2016, order in the

1 Benicar case, Docket Number 15-2606, Docket Number 419. In
2 effect, what that order says is that the defendants are going
3 to compile the records and put them in the repository and that
4 if the plaintiffs want copies of the records, they have to pay
5 for them.

6 I'll also direct the parties to the April 19, 2016,
7 Case Management Order Number 23 entered in the Benicar case.
8 That's Docket Number 459 in Benicar. That was the protocol
9 that was consented to by the parties and approved by the Court.

10 So the Court's order is going to incorporate, by
11 reference, the two orders from Benicar, Docket Numbers 419 and
12 459.

13 Next issue that I saw in the papers, and this may not
14 be an issue because for the life of me I don't understand it,
15 there was an issue raised about plaintiffs' objections to the
16 Rule 34 document requests for the class representative
17 plaintiffs in the economic matters. I read plaintiffs' emails
18 and what I got out of it was that all plaintiffs are doing is
19 asserting their privilege objections. They're not asserting
20 substantive objections to the requests, which, of course, is
21 appropriate since the Court resolved all objections. In no
22 way, shape or form did this Court ever rule that a party
23 couldn't assert privilege objections.

24 So is there a genuine issue that has to be addressed
25 regarding this plaintiffs' objections issue?

1 MR. STANOCH: Your Honor, this is David Stanoch for
2 the plaintiffs.

3 No. I spoke with defense counsel about this this
4 morning. We're going to work it out. If they want us to amend
5 something to make things clear to put this to bed, we'll do it.

6 THE COURT: Okay.

7 MS. HEINZ: Your Honor, if I may, this is Jessica
8 Heinz for the Aurobindo defendants.

9 I just wanted to confirm, yes, I spoke with
10 plaintiffs' counsel today. We had a very nice conversation. I
11 told him, you know, all we're really looking for is for the
12 plaintiffs to do the same thing that MSPRC did, which was to
13 just serve amended responses that removed any of the objection
14 language. We can understand if the plaintiffs, you know,
15 believe that there are responsive documents that are protected
16 by privilege, and, as counsel and I discussed this morning, you
17 know, if that's the case, you know, we would just ask that the
18 plaintiffs produce a privilege log like the defendants did for
19 them. And I don't think we have any disagreement there. We
20 would just ask, you know, for a privilege log that complies
21 with the assigned protocol. And, you know, given that the
22 depositions are scheduled to start next week, we're hoping that
23 we can get this put to rest within a week.

24 THE COURT: Thank you, Ms. Heinz. You're correct that
25 whenever a party asserts a privilege objection, a privilege log

1 is required. That goes for the defendants and the plaintiffs.
2 And I assume that will be done.

3 Next issue I saw in the papers was some issue
4 regarding the Chinese secrecy law. It wasn't clear to the
5 Court what the actual dispute is, if there is one. Certainly,
6 and we've talked about this before, if ZHP is asserting some
7 sort of objection based on the Chinese secrecy law, there has
8 to be a privilege log supplied.

9 I saw the briefing on this issue but I wasn't quite
10 clear why. So can someone raise the issue if it is a genuine
11 dispute.

12 MR. SLATER: Hello, Your Honor. Adam Slater, for the
13 record.

14 We had an exchange with defense counsel after we filed
15 these papers. The reason we provided that law was to provide
16 the context for why the information was needed in a privilege
17 log that we believe was not provided. Defense counsel has
18 agreed to provide a more fulsome privilege log to the State
19 Secret documents, so-called, providing for -- the most
20 important three categories of information are to identify the
21 actual Chinese State Secret law that they are referring to, the
22 text of it, so we can actually know what they're asserting.

23 Second, we need fulsome descriptions of the documents
24 so that we can evaluate and ultimately the Court can evaluate
25 the propriety of the claim of privilege, and that's why we,

1 again, cited the law that talked about the fact that, for
2 example, if a whole document doesn't all encompass a, quote,
3 unquote, State Secret, then part of the document has to be
4 produce and part doesn't. So they're going to provide us a
5 more fulsome description so we can evaluate that.

6 And also provide, third, the names and titles of the,
7 quote, unquote, cast of characters that are named in the log or
8 need to be added to the log naming the people that the
9 documents were sent to, the custodians, the keepers, the people
10 who sent the documents, et cetera, so we know all the people
11 involved with the documents; and then with all that
12 information, we'll be in a position to evaluate the claim and
13 most likely to tee up the issues for the Court to address.

14 As the Court had told us previously, you didn't want
15 to address the State Secret issue until it was actually a ripe
16 issue either in the context of the documents or ultimately a
17 witness; and I think we ultimately decided now that we have the
18 documents, we know the scope of what's being claimed, and I
19 think that was the mechanism Your Honor directed us to use to
20 address the State Secret issue.

21 So I think defense counsel said they will have that to
22 us by the 22nd, which is fine.

23 THE COURT: Good. Okay. So we'll put that issue
24 aside.

25 The last two issues may not be issues. I saw a

1 reference to an objection regarding the T3 data for the
2 wholesalers and written discovery and dep notices to the
3 pharmacies and the wholesalers. Am I correct that there's
4 nothing to address now but the parties are still meeting and
5 conferring on that?

6 MR. STANOCH: David Stanoch for plaintiffs.

7 Correct, Your Honor.

8 THE COURT: Okay. So the only issue left on my agenda
9 is the most meaty issue for this call, the depositions of the
10 defendants. And I've read all your papers.

11 It seems to me that we have at least two issues. One
12 issue is the length of the 30(b)(6) depositions; and then the
13 second issue, scheduling of the various depositions.

14 I suppose we should start with ZHP because that seems
15 to take up the most time in the parties' briefs and so forth.
16 Let me start with what I think is, hopefully, the easier issue,
17 the scheduling issue.

18 Mr. Goldberg, if I remember correctly, there was an
19 original schedule which was supplemented by a letter with an
20 indication that I think Mr. Du was available for deposition, I
21 don't know, the second week of February. Am I right about
22 that?

23 MR. GOLDBERG: Correct, Your Honor, February 17.

24 THE COURT: All right. Is that the schedule that ZHP
25 is proposing?

1 MR. GOLDBERG: Yes. Your Honor, at Exhibit D of the
2 letter that we provided, you'll see our full schedule, which
3 also includes the dates of the additional witness the Court has
4 asked us to provide. And the column on the right, the last
5 column on the right says 1/5/2021 proposal and that would be
6 the proposal that's the December 8th proposal plus the few
7 modifications the Court has asked us to propose. So that
8 1/5/21 proposal would be the final proposal.

9 THE COURT: And that's Exhibit D, right?

10 MR. GOLDBERG: Exhibit D as in David.

11 THE COURT: Got it.

12 So, Mr. Slater, we didn't get to the length of the
13 30(b)(6) depositions yet, but is there an objection to that
14 schedule?

15 MR. SLATER: Your Honor, I don't want to say there's
16 an objection but I think that because of some differences
17 between us on the length of the depositions and a few things, I
18 think that our calendars, and we provided the calendar at
19 Exhibit B to our submission yesterday and submitted the updated
20 calendar today, which is really the one we would defer to, from
21 our perspective would be the schedule that we would -- we would
22 say is the correct one because it -- because it's dependent
23 somewhat on the length of the depositions. And I believe we
24 got an email today from counsel, I'm not even sure if theirs or
25 ours -- I'm sure ours doesn't encompass it -- one of the

1 witnesses they said has to have their date changed, so we have
2 to check that.

3 So, I mean, the parties can certainly reconcile the
4 calendars at the end of this hearing, you know, tomorrow when
5 we do in line with whatever rulings you make. I think they're
6 very close and almost the same.

7 I will say, not to get too far into it at this point,
8 but when you look at the calendar, and, in particular, ours,
9 because that really shows it on a calendar, you see what March
10 looks like and --

11 THE COURT: I got it.

12 MR. SLATER: -- you see what we're up against --

13 THE COURT: I got it. I understand the issue.

14 MR. SLATER: Okay.

15 THE COURT: Okay. I understand. We're going to start
16 with ZHP, though. Okay.

17 MR. SLATER: That's what I'm talking about, ZHP.

18 THE COURT: I got it.

19 So turning to -- we're still dealing with just ZHP.

20 Turning to the length of the 30(b)(6) depositions, am I
21 correct, Mr. Goldberg, that ZHP is proposing to produce ten
22 witnesses in response to the 30(b)(6) topics and that plaintiff
23 intends to depose all of those ten as fact witnesses?

24 MR. GOLDBERG: You're correct, Your Honor.

25 THE COURT: So the parties dispute how we should

1 approach this.

2 If I'm correct, ZHP has proposed that the Court set a
3 limit on the number of hours the 30(b)(6) witness has to be
4 deposed and plaintiff can divide up those hours however they
5 want.

6 Plaintiffs' proposal is that it be allocated a certain
7 number of days for each of the ten responsive 30(b)(6)
8 witnesses. Is that correct?

9 MR. GOLDBERG: That's correct, Your Honor.

10 THE COURT: I've read your papers.

11 MR. GOLDBERG: Yes.

12 THE COURT: I have it all, Mr. Goldberg. I spent a
13 lot of time going through these papers and looking at the
14 numbers.

15 The Court is going to go with the plaintiffs' method
16 of allocating time. I'm prepared to give you the Court's
17 rulings on how much time is allocated to each of the ten
18 witnesses. I'll, of course, confirm it in an order to be
19 entered. And I'll give you a little bit of background about
20 how I got to where I am.

21 The issue of how much time to be afforded for a
22 30(b)(6) deposition is clearly a discretionary issue. There's
23 no hard-and-fast rule about what to do, especially in a complex
24 MDL like this, and that's why it would be in the parties' best
25 interest to resolve the issue amongst themselves. Since they

1 didn't do that, it falls to the Court to decide. We've been at
2 this for too long to let this issue go on any further and the
3 Court's going to make a final definitive ruling today.

4 The Court's analysis takes into consideration what it
5 believes the most important topics for the questioning is: The
6 testing done on the API, the results of that testing, and the
7 product tracing issue, and what notice there was, if any, of
8 the nitrosamine contamination. It seems to the Court that
9 those are the most important issues and I'd be surprised if the
10 parties disagree.

11 Under plaintiffs' original proposal -- and we're just
12 talking about these ten 30(b)(6)/fact witnesses -- plaintiffs
13 propose a total of 23 and a half days of testimony combined for
14 these ten witnesses, 30(b)(6) testimony and fact testimony.
15 That adds up to 164 -- 164.5 hours or the equivalent of 13 and
16 a half days. Of that 164.5 hours, 70 hours are for the fact
17 depositions, ten times seven is 70. So as the Court analyzed
18 it, plaintiffs' initial proposal was they wanted 94.5 hours of
19 deposition testimony for the Rule 30(b)(6) witnesses or 13 and
20 a half days. ZHP had proposed only 20 hours of Rule 30(b)(6)
21 testimony or two days plus six hours.

22 So plaintiffs are proposing 13 and a half days and ZHP
23 is proposing two days and six hours. The Court's ruling is
24 going to wind up somewhere between but not exactly.

25 The bottom line is that the Court's ruling, and I'll

1 give it to you, is that there's going to be a total of 45.5
2 hours of Rule 30(b)(6) deposition testimony or six and a half
3 days compared to the 13 and a half days that the plaintiff
4 proposed. And this is how I allocated the days. And I'll do
5 my best to pronounce these names correctly. And keeping in
6 mind, again, that the Court just used its best discretion in
7 determining what's reasonable, fair and appropriate.

8 L. Wang, W-A-N-G, one day total. And when the Court
9 says total, it's talking about 30(b)(6) testimony and fact
10 testimony. H. Wang, W-A-N-G, 1.5 days; L. Lin, L-I-N, 1.5
11 days; J. Wang, W-A-N-G, 1.5 days; H. Gu, G-U, 1.5 days; J. Ge,
12 G-E, 1.5 days; M. Zhang, Z-H-A-N-G, two days; O. Lee Dong --
13 I'm sorry, it's O. Dong, D-O-N-G, 1.5 days; P. Dong, two days;
14 and M. Li, L-I, two and a half days.

15 In reading the plaintiffs' papers, M. Li apparently
16 was the only -- of course, they're all important, but M. Li was
17 the only witness that plaintiff especially highlighted of
18 special importance and that's why the Court allocated two and a
19 half days.

20 If the Court's math is right, that adds up to 16.5
21 days or 115.5 hours. Seventy of that is fact, seven times ten,
22 fact depositions. So the Court allocated 45 and a half hours
23 to Rule 30(b)(6) deposition testimony compared to what
24 plaintiff originally proposed of 94.5 and what defendant ZHP
25 had proposed of 20 hours.

1 The Court is going to approve ZHP's deposition
2 schedule that's attached as Exhibit D. The Court previously
3 explained why. ZHP, to the Court's knowledge, was the only
4 party who stepped up to the plate, gave their deposition
5 schedule early, even though the first service was on the eve of
6 a conference as I understand that issue, but they did step up
7 to the plate; plus, it's no secret, the practical and
8 logistical problems that ZHP is facing, the Chinese New Year,
9 the language, the travel, the quarantine, COVID. We would have
10 liked to have Mr. Du deposed earlier but I assume, like I do
11 for everybody, that they're acting in complete good faith and
12 this was the earliest practical date, February 17, that he
13 could be available.

14 I understand that all the ZHP depositions are in March and
15 that is going to be taken into account when we deal with the
16 other parties in the case because I've already stated we're not
17 going to let all these depositions be pushed back to March,
18 it's just not fair to the plaintiffs, when the parties have
19 been on notice for months and months and months that these
20 depositions were going to start on January 18 or 19. And it's
21 a shame that the parties only started to seriously talk about
22 scheduling these depositions in the past few days or the last
23 week or two. This should have been going on for the past
24 couple months, but it is what it is and we'll just deal with
25 it.

1 So, I think I've addressed the ZHP deposition issue.
2 Mr. Goldberg, I've made it clear, the Court is not ruling on
3 whether these disputed witnesses have to be produced because
4 they're employees. There's a briefing schedule on that. I'm
5 not going to decide that. But at least we have the days
6 available in case the Court's ruling is that they have to
7 appear; and if their -- if their request is denied, no harm no
8 foul, just take them off the schedule. Okay?

9 Any other issues --

10 MR. GOLDBERG: Yes, Your Honor.

11 THE COURT: -- for ZHP before we move on to the next
12 party?

13 MR. SLATER: Your Honor, it's Adam Slater. I'm
14 certainly not going to reargue the issue. I just want to, if I
15 could, just state a couple things very briefly because I just
16 have concerns about where we'll be later. I don't want later
17 for someone to say I didn't say these things.

18 One, and this is more for the record, the letter that
19 defense counsel filed about alleging that we were not engaging
20 in these discussions was false. And I'm not going to get into
21 it any deeper than to say we've been engaging with them and,
22 unfortunately, we felt there were a lot of issues with good
23 faith of what was being presented and whether or not there was
24 a fulsome discussion on both sides. So there were a lot of
25 things said in that letter that just were not accurate.

1 We've been engaged in these discussions, I personally
2 have been, for months or for a month or two, however long it's
3 been since they gave us the schedule, a month.

4 Number two, I want to just clarify, the amount of time
5 that Your Honor has assigned to us, I assume, but I want to
6 make sure, we can use that time as we see fit because I'm just
7 going to state for the record the time is not going to be
8 adequate probably for many of these witnesses. We're now going
9 to be in a severely prejudiced position to try and take these
10 depositions and we're just going to need to probably -- I don't
11 even know if we're going to be able to take any individual fact
12 testimony from any of these witnesses at this point because
13 we're probably going to need most or all of the time for the
14 30(b)(6). I just want to make sure that it's clear for the
15 record that we can use that time as we see fit.

16 And, you know, you said you were going to address the
17 calendar and scheduling. What I started to say before, if you
18 look at the calendar we supplied Your Honor both yesterday and
19 today, which was slightly updated, and you look at what we're
20 facing just with ZHP -- you know, I get that ZHP has all these
21 different problems and Mr. Du has travel arrangements through
22 the company and there's New Year's and all and everything, but
23 the fact that that's being used to prejudice plaintiffs I think
24 is unfair. I think that we're being significantly prejudiced
25 and I think that it's going to become clear as these

1 depositions roll out, and hopefully defense counsel will be
2 reasonable as we're taking these depositions when and if we
3 say, look, we need more time to finish this person. Because if
4 we can't complete a deposition, obviously, we have the right to
5 move under good cause, and if they take a witness back to China
6 from Hong Kong and we later prevail, we're going to expect that
7 witness to fly back from China to Hong Kong to have their
8 deposition continued, if it turns out that we prevail and show
9 that we actually have significant subsequent questioning that
10 we couldn't get to based on the massive documents that we're
11 going to have to deal with.

12 I'm certainly not challenging the decision and I hope
13 there's no disrespect. Like I say, I just want to make a
14 record of those issues and, of course, to confirm, because it's
15 important, that we can use that time as we see fit. Otherwise,
16 we're really in a bind, even worse than we already are.

17 THE COURT: Okay. Let me address the three points
18 that you raised, Mr. Slater.

19 As to the first point where you disagree with ZHP's
20 summary of the parties' discussions, the record will reflect
21 that that issue played absolutely no role in the Court's
22 decision. As far as I'm concerned, it was just static and had
23 no impact on the Court's ruling.

24 Two, with regard to the time, let's use an example.
25 Start with the first witness, L. Wang, W-A-N-G. The Court

1 allocated one day to his or her deposition. As far as the
2 Court's concerned, it's up to the plaintiffs to decide whether
3 they want to use that one day for 30(b)(6) testimony or fact
4 testimony. That's your decision. And that one day of time is
5 not being allocated by the Court, if that's what you meant. If
6 you -- if what you mean is can you horse trade with ZHP to give
7 an hour -- I'll take an hour here if I give up an hour here,
8 well, that's up to you and ZHP. I'm not going to weigh in on
9 that issue. If you can work that out, fine; but the Court's
10 not getting involved in that issue.

11 But with regard to the allocation of the 30(b)(6) and
12 fact testimony, am I correct that that's what you wanted to
13 inquire about, Mr. Slater, or was it something different?

14 MR. SLATER: No. That was it, Your Honor. You
15 addressed it, that we can use the time as we see fit, which is
16 what I was looking to confirm.

17 THE COURT: And the last issue with regard to the
18 calendar, I'm well aware of it. I've said it's extremely
19 unfair to the plaintiffs to push everything back to March.
20 We're not going to let that happen. The parties have known
21 about these depositions for months. They certainly had time to
22 make arrangements and we're just not pushing everything back to
23 March.

24 So let's go through the list.

25 The next company I have on my list is Mylan.

1 MR. DAVIS: Your Honor, I'm sorry. Your Honor, I'm
2 John Davis for the plaintiffs.

3 MR. GOLDBERG: Your Honor?

4 THE COURT: Sure.

5 MR. GOLDBERG: Your Honor, I'm sorry, this is Seth
6 Goldberg. I didn't have a chance to weigh in on the points
7 that Mr. Slater raised at the end, and I just would like to
8 clarify one thing about those points and the allocation of time
9 that a witness would have. And I understand what you're saying
10 about somebody who has a day of testimony.

11 The question goes to somebody like Peng Dong, for
12 instance, who you've said would be deposed for two full days.
13 Under the rules, they would get seven hours of fact testimony
14 and then, obviously, that would be a day of 30(b)(6) testimony.
15 You know, I -- I think we would be concerned that, you know,
16 the schedule would then somehow turn into an entire schedule of
17 30(b)(6) testimony. And if that were the case, you know, our
18 witnesses are now going to be deposed for a lot longer than
19 they would -- they would otherwise have been deposed for if all
20 they were going to be providing is 30(b)(6) testimony. And so
21 we think -- you know, we will certainly work with plaintiffs.
22 And what we had proposed was for every hour of 30(b)(6)
23 testimony that they -- that there would be some allocation --
24 there would be some sliding scale but that we would not be
25 doing away with the 30(b)(6) -- with the fact testimony

1 entirely.

2 THE COURT: Well, let me tell you the Court's ruling.
3 And to make it perfectly clear so there's no mistake on the
4 record, the Court reiterates its holding that it is not
5 allocating the days that the Court has ordered for plaintiffs.
6 The Court has discretion to permit a party to take more than
7 seven hours of deposition. And if there's ever a case where
8 that seven-hour limit should be extended, this is it, due to
9 the incredible complexity and technicality of the issues to be
10 addressed on top of the fact that these depositions are being
11 taken by Zoom, on top of the fact that we're dealing with
12 foreign language and travel.

13 So to make it unmistakably clear, if the plaintiffs
14 want to use two days for 30(b)(6) deposition testimony and no
15 time for fact deposition testimony, that is their prerogative.
16 The Court is not going to step on plaintiffs' discretion to
17 decide how it wants to allocate their time. The Court has
18 limited significantly the time that plaintiffs represented they
19 needed. In order to be fair to all parties, the Court
20 sharpened its pencil and looked at the notices and looked at
21 the topics and tried to come up with a reasonable allocation of
22 days, and I'm going to leave it to the plaintiffs to decide how
23 they want to use their time.

24 MR. GOLDBERG: I understand, Your Honor. Just one
25 point, if I may.

1 If they -- if they were to choose to use all of the
2 time for a witness as 30(b)(6) time, and later in the case that
3 witness was going to be presented at trial, for example, we
4 wouldn't want to be heard that they should be able to take that
5 deposition -- that witness's deposition as a fact deposition,
6 and that we have somehow, you know -- that -- that they should
7 somehow then get that fact deposition. I mean, I think we
8 would argue that they would have waived the ability to have a
9 fact deposition at that point.

10 THE COURT: Mr. Goldberg, if I was ruling on that
11 issue, I would agree with you one thousand percent.

12 MR. GOLDBERG: Okay.

13 THE COURT: Plaintiffs have two days to take that
14 deposition. They can allocate it however they want, but they
15 can't come back and ask for three days because they took two
16 days to take a Rule 30(b)(6) deposition. I -- you know, I
17 would assume that that shouldn't be a matter of legitimate
18 debate, but this Court has made it clear that if it was ruling
19 on the issue, it has no doubt, zero doubt, that plaintiffs'
20 request to take a seven-hour deposition, after it took a
21 two-day 30(b)(6) deposition, when it had two days, the request
22 would be denied.

23 MR. GOLDBERG: Thank you.

24 THE COURT: So why don't we move on to the next topic,
25 which is Mylan, I think.

1 MR. DAVIS: Yes, Your Honor. It's John Davis for the
2 plaintiffs. I'm sorry to have cut you off there before.

3 I just wanted to give an update. Clem -- Mr.
4 Trischler and I had some productive conversations. We've
5 agreed to on the who, who's going to be deposed, and I think,
6 you know, given the Court's ruling, I think we're going to
7 agree on the scheduling, which we're already pretty close to a
8 full set schedule anyways.

9 I do want to talk about the deposition length, though.
10 And we have quite a sticking point there. And I don't want to
11 blame Mr. Trischler, my impression would be it's more the
12 clients, but, you know, we never got really an offer more than
13 seven hours total. And so if you read the letter and the
14 insert on Mylan, that insert was our latest proposal to Mylan
15 in a compromise. And I felt, to some extent, that I was almost
16 negotiating with myself there. And that was a proposal of, I
17 believe, three days with Mr. Glover, who is a witness that
18 Mylan designated for over half of the 54 30(b)(6) topics, I
19 believe 28 of them, two days with Mr. Talton and Mr. Molnar,
20 one and a half days with Snider and one day with Ms. Reed, and
21 given the Court's guidance, which is, we can use the time as we
22 see fit, I think that's particularly optimistic for Mylan.
23 There are three of the witnesses we don't even have custodial
24 files for. I recognize Your Honor already ruled on that. But
25 I think that I'd say -- you know, I'm not going to ask for much

1 more than what I had asked for of Mylan in our meet and
2 confers, but I think given the way Your Honor's gone with this,
3 I think that's actually, you know, a reasonable spot to arrive
4 at.

5 THE COURT: Counsel, I'm a little confused about Mylan
6 because -- and it could be how I read the letter. At first I
7 thought the letter indicated that Mylan was only producing one
8 witness in response to the 30(b)(6) notice, but then the letter
9 goes on to talk about, you know, the four or five people that
10 you just mentioned. What did I miss?

11 MR. DAVIS: My apologies if that was unclear. I
12 believe what I was trying to say was that Mylan had designated
13 a single witness for 28 of the 54 topics and that's across
14 various topical areas. And so, you know -- his name is Derrick
15 Glover. And, obviously, for that many topics spread across
16 numerous topical areas, we're going to need quite a substantial
17 amount of time with him.

18 My proposal to Mylan had been three days total and I
19 think that's -- that's reasonable, three days including --
20 including any time that I would use for a fact deposition. I
21 can re-list the other four witnesses and the times that I
22 proposed to Mylan for those. Again, that was in the spirit of
23 compromise, if you wish me to list those.

24 THE COURT: Before we hear from Mylan, what I'm
25 hearing you saying is you may not be there yet but it seems

1 like you're going to agree on who's going to be deposed and the
2 schedule to depose those witnesses, but the issue to be
3 addressed is how long the 30(b)(6) deposition plaintiffs have;
4 am I correct about that?

5 MR. DAVIS: Yes, Your Honor. I mean, I guess just
6 with the caveat that, you know, we didn't have any role in who
7 Mylan designated as the corporate designees. I think we might
8 have made different choices but that's, you know, not something
9 we can have input in, at least that's my understanding of
10 corporate designees. But, yes, we've agreed on several
11 US-based fact witnesses, several India-based fact witnesses. I
12 think, you know, the Court's guidance on the time length is
13 going to shore up any final issues that may have lingered to
14 today as regards to scheduling of them. But I think the
15 scheduling is something that we can work out; it's the time
16 lengths that we're concerned with today.

17 THE COURT: And what I'm hearing is plaintiffs'
18 proposal is, and I'm going by the number of days, three plus
19 two plus one plus one and a half, which is you want a total of
20 seven and a half days of 30(b)(6) deposition testimony; am I
21 right?

22 MR. DAVIS: Three plus two plus two plus one and a
23 half plus one. Three for Glover, two for Talton, two for
24 Molnar, one and a half for Snider, one for Reed.

25 THE COURT: Okay. So I have my math wrong. Then it's

1 five, six, eight, nine -- nine and a half, is that what it adds
2 up to?

3 MR. DAVIS: Three, five, seven, eight -- nine and a
4 half days total, Your Honor.

5 THE COURT: Okay. So nine and a half times seven -- I
6 have my handy computer in front of me, bear with me -- is --
7 9.5 times seven -- 9.5 times seven is 66.5 hours.

8 So let's hear from Mylan.

9 MR. TRISCHLER: Thank you, Your Honor. Clem Trischler
10 on behalf of the Mylan defendants.

11 Perhaps just to make sure we have a clear record
12 before we talk about what's at -- where the parties disagree, I
13 think it might be helpful for context, at the very least, to
14 talk about where there's agreement because I think, for the
15 most part, the vast majority of the issues with respect to the
16 deposition schedule of the Mylan defendants has been resolved
17 based on a number of meet-and-confer conferences that the
18 parties have conducted.

19 First of all, the parties have agreed to a total of 12
20 witness depositions for Mylan. Five of those witnesses have
21 been designated to cover the 30(b)(6) topics directed to the
22 Mylan defendants. The remaining seven are fact witness
23 depositions. We have offered dates for those depositions
24 throughout the months of February and March. For the most
25 part, that schedule is agreed upon between the parties.

1 I think what Mr. Davis and I discussed as recently as
2 last evening and this morning was that once we had some final
3 guidance from the Court as to the amount of time that was going
4 to be permitted with each of these depositions, that would help
5 us finalize the start date and end dates for the various
6 depositions; but, generally speaking, with respect to the
7 schedule, Your Honor, it's 99.9 percent there.

8 So the witnesses -- the identification of the
9 witnesses has been agreed upon, the schedule is generally
10 agreed upon.

11 Where we disagree is, as has been discussed, is the
12 amount of time that the plaintiffs are seeking for these
13 depositions. I believe that nine and a half days of testimony
14 for five corporate witnesses is excessive. The Rules of Civil
15 Procedure, as we all know, establish limits for a reason. I
16 certainly agree with the Court's comments at the outset of this
17 conference that those limitations on discovery are
18 discretionary, but I believe, you know, nine and a half days is
19 simply too much.

20 What we proposed in the alternative was 14 hours for
21 the deposition of the 30(b)(6) witnesses to be spread across
22 the five witnesses as the plaintiff deems fit. So that would
23 be 14 hours on top of the -- since they want to take the
24 witnesses as fact depositions, start with the seven,
25 presumptive seven hours, plus 14 and a half to be spread across

1 the five witnesses as they see fit.

2 I think that the argument that the plaintiffs
3 consistently make is, well, there's a whole lot of topics here,
4 Judge, and there's a whole lot of things to cover and so we
5 need a lot of time. And so they serve a 30(b)(6) notice that
6 has 50-plus topics but when you look carefully at the notice,
7 Your Honor, there's really five issues that are covered in the
8 -- with subject matters that are repeated over and over and
9 over again and are phrased in a slightly different manner; but
10 really what the subject matters are, number one, process
11 development; number two, testing, cGMP and manufacturing
12 controls; number three; risk assessments with respect to
13 nitrosamines and the contamination that was found; number four,
14 regulatory affairs issues; and, number five, sales issues. And
15 there's a designee that's been identified on each one of those
16 subjects.

17 THE COURT: How about product treatment?

18 MR. TRISCHLER: Excuse me?

19 THE COURT: Product treatment.

20 MR. TRISCHLER: That falls under the sales umbrella.
21 I think that the notice talks about sales and tracing. And so
22 there's a witness that's designated on each of those subjects
23 and I submit just because you list those subjects over and over
24 again and phrase them slightly differently doesn't make the
25 deposition more complex than it is; it doesn't justify days and

1 days of deposition testimony.

2 And so, you know, I realize that the Court has to do
3 -- is in a difficult position trying to find a, you know, a
4 balance and trying to find what's fair, but I think a proposal
5 that we've made that is double the presumptive time that's
6 authorized under the Federal Rules of Civil Procedure is more
7 than fair; and subjecting five witnesses to nine and a half
8 days of testimony I think goes over the edge and is too much.

9 THE COURT: Let me ask a question about Mylan just to
10 find out if it's the same calculation as it was with ZHP
11 because I think it's a very, very important point.

12 When we were dealing with the ZHP witnesses, we were
13 only dealing with the 30(b)(6) witnesses who were also going to
14 be fact witnesses. So, for example, when we talked about one
15 day for one of those witnesses, it was one day total for
16 30(b)(6) and fact testimony. So plaintiffs had proposed three
17 days for Mr. Glover.

18 Plaintiff, am I correct that when you said three days,
19 you were assuming that would be the total of 30(b)(6) and fact
20 testimony?

21 MR. DAVIS: Yes, Your Honor, that is correct. And
22 that's why I made a point to mention that, you know, Mylan is
23 somewhat unique amongst the defendants. I don't think any
24 other defendant put forth a corporate designee that was not
25 listed as a custodian. And so, you know, we're -- we're

1 willing to accept the designees that have been given to us
2 since, obviously, we have to; but that use of fact witness time
3 is somewhat, you know, less, we're less able to use three of
4 these witnesses. We don't even have custodial files.

5 MR. TRISCHLER: So, Your Honor, if I could address
6 that issue. That's totally irrelevant to the issue of the
7 topic of the deposition.

8 THE COURT: Hold on. Hold on. Mr. Trischler, I don't
9 mean to interrupt you but I don't want to lose my train of
10 thought. I want to nail this down and, of course, then I'll
11 turn the floor over to you.

12 Plaintiff talked about these five witnesses who were
13 going to be produced from Mylan now who were going to be
14 responsive to the 30(b)(6) notice.

15 Plaintiff, are you also seeking to depose these five
16 as fact witnesses?

17 MR. DAVIS: I think, you know, similar to what Your
18 Honor said in regards to ZHP, I think, you know, we would just
19 kind of use our time as -- if we're -- you know, for example, I
20 propose one and a half days with Dr. Snider, for example, and I
21 think the way we propose handling it, I think like Your Honor
22 suggested with regard to ZHP, is, you know, if we feel like at
23 the end of that one and a half days that we just need to use
24 all of that for 30(b)(6), that's a decision we'll have to live
25 with. But -- but Your Honor is correct, what I proposed is a

1 time for both 30(b)(6) and fact witness time.

2 THE COURT: Okay. So, again, it's so hard to try and
3 come up with a reasoned basis for how many hours to limit these
4 depositions to; but in the first instance, plaintiff is asking
5 for nine and a half days or 66.5 hours. Of that 66.5 hours, 35
6 of those hours are for fact depositions, right? So plaintiff
7 is asking for 31.5 hours of 30(b)(6) deposition testimony
8 because they're going to get that seven anyway. Plaintiffs are
9 asking for 31.5 and Mylan is saying give them 14. So, you
10 know, that's what -- it may not be the most scientific way to
11 look at this, but I'm trying to come up with some reasonable,
12 rational basis to try and reach a fair conclusion.

13 MR. TRISCHLER: Your Honor, this is Clem Trischler, if
14 I may.

15 You know, I'll accept the Court's math because you've,
16 obviously, spent more time crunching those numbers than I have,
17 but, you know, what dawns on me, and if we're looking at a fair
18 result, a fair result is one that ought to be equitable and
19 apply equally across all of the defendants. What the Court did
20 with respect to ZHP, who was producing ten corporate designees,
21 was to allow 45.5 hours of corporate -- of corporate designee
22 time spread across ten witnesses, which is about four and a
23 half -- by my math, about four and a half hours per witness.
24 Mylan's producing five depositions. If we apply the same
25 rationale, when we proposed 14 hours, a compromise would be

1 something along the lines of 21 hours. That would be --

2 MR. DAVIS: Your Honor, may I respond to that?

3 MR. TRISCHLER: -- the same amount of time that the
4 Court has provided plaintiffs with respect to ZHP; I don't know
5 why Mylan should be treated differently. And, again, the
6 argument that under Rule 30(b)(6) that we can identify any
7 manager or person who consents to testify on behalf of the
8 corporation who's prepared to address the subject matters, the
9 fact that they're not a designee doesn't matter, and the fact
10 that they don't have a custodial file doesn't entitle the
11 plaintiff to, you know, additional time to conduct the witness
12 deposition.

13 So I think that -- I sympathize with the Court's
14 struggle to find an equitable solution. My argument as to
15 what's equitable is that it ought to be equally applied to all
16 the parties. And based on the rulings that we have so far, 31
17 and a half hours of 30(b)(6) time to the plaintiffs on top of
18 seven hours for each of the corporate designees wouldn't strike
19 me as fair. It strikes me as excessive and more than what the
20 other defendants have been required to provide.

21 MR. DAVIS: Your Honor, may I respond to a few points?

22 THE COURT: Last word.

23 MR. DAVIS: Sure. Yeah, I don't -- I think that Mr.
24 Trischler's argument has a logical fallacy to it, which is,
25 Mylan should be getting a benefit from producing fewer witness.

1 It's the same number of topics or mostly the same number of
2 topics. And so I don't think there's any logical basis to
3 saying that they should get some kind of break because they
4 produced fewer witnesses.

5 In addition, you know, I only brought up the lack of
6 custodial files to say that, you know, we would be wanting to
7 use most of this time for 30(b)(6) time and that's the basis
8 for, you know -- and, again, I prefaced my argument with this,
9 is that what I put in the letter was not our litigation
10 position, it was my compromise position. That's what I came in
11 with.

12 So I started from a point of being reasonable. I
13 don't think Mr. Trischler's client was being all that
14 reasonable in asking for, at first, seven hours total, which I
15 think would be about seven minutes per topic, if you do the
16 math, which is barely enough time to get a question or two in.

17 So, I mean, I would just say with that, I don't think
18 that -- that Mylan should get a break for producing fewer
19 witnesses.

20 THE COURT: Okay. Here's my question, last question
21 to you, plaintiff: Can you give me the names again? I have
22 Mr. Glover's name. Can you go through the other four
23 witnesses?

24 MR. DAVIS: Sure. My proposal is three days for Mr.
25 Glover, two days for Mr. Talton, that's T-A-L-T-O-N, two days

1 for Mr. Molnar, it's M-O-L-N-A-R, 1.5 days with Dr. Snider,
2 S-N-I-D-E-R, and one day with Ms. Katie Reed, R-E-E-D.

3 THE COURT: Okay. Here's the Court's ruling and I'm
4 going to do it the same way we did it with ZHP.

5 Glover, three days, Talton one and a half days,
6 Molnar, Snider, Reed, one day. That's a total of three, four,
7 five, six, 7.5 -- 7.5 days.

8 Next is Teva.

9 MS. WHITELEY: Good afternoon, Your Honor. This is
10 Conlee Whiteley on behalf of the plaintiffs.

11 We met and conferred with Teva's counsel up until a
12 couple moments before this call and we have made a good bit of
13 progress. For starters, and most importantly, at least, that
14 was what our primary concern was, we've been able to move some
15 dates into February. Two of those have been confirmed with
16 actual dates and names and we're working on placing the other
17 three. So that alleviates some of the dates that were being in
18 March.

19 We also began talking about the hours to be allocated.
20 Teva wanted to -- has proposed, I believe, 20 and we were not
21 able to agree to just have a lump sum and we believe that to be
22 not enough number -- the hours would not be enough for all of
23 the witnesses. We were not able to come to agreement on a
24 per-witness amount; but we did discuss how to allocate between
25 the 30(b)(6) time period and the fact time period and were

1 making progress.

2 I believe within the guidelines you set between ZHP
3 and Mylan, and Teva's just about in the middle there in terms
4 of the witness number, and, of course, the topics are very
5 similar, that we can reach an agreement based on the progress
6 we've made today.

7 THE COURT: So, Ms. Whiteley, are you suggesting that
8 the Court permit Teva and plaintiffs to work it out?

9 MS. WHITELEY: Yes, Your Honor. What my suggestion
10 would be, and, you know, subject to Teva's response, would be
11 that we put together a chart that identifies the witnesses, as
12 you've done, and then allocate the hours or days for each and
13 submit it to the Court for approval.

14 THE COURT: Any objection, Teva? Or do you want to
15 just hash it out now?

16 MS. LOCKARD: I don't have an objection to that, Your
17 Honor. It's Victoria Lockard, for the record.

18 We did make some progress on the call today and, you
19 know, we acknowledge that your Court -- Your Honor's rulings
20 would sort of guide us in finalizing this. So I think we
21 should be able to reach agreement.

22 I will just note for the record, I think we had agreed
23 to five of the seven 30(b)(6) witness dates so far, and we're
24 shortly away from confirming the other two, and we have managed
25 to move three, possibly four of those to February. So I think

1 that alleviated the crunch time that the Court was concerned
2 about. So we're making good progress and I think that we could
3 avoid taking up the Court and the other parties' time and just
4 get this resolved on our own today or this week.

5 THE COURT: Thank you, counsel.

6 Next issue is Aurobindo. Is there a dispute,
7 plaintiff? Maybe somebody's talking but they're on mute.

8 MR. NIGH: Is Ruben on the line? I'm not sure if he's
9 on. I saw an email saying --

10 THE COURT REPORTER: I'm sorry. Who's speaking?

11 MR. NIGH: This is Daniel Nigh. I was just seeing if
12 Ruben Honik is on the line.

13 THE COURT: He might be but he might be on mute. I
14 can't hear him.

15 We'll come back to Aurobindo. Maybe we could track
16 down counsel in the meantime.

17 Do I understand that Hetero is worked out?

18 MR. SLATER: Yes, Your Honor. This is Adam Slater.
19 Hetero is worked out.

20 THE COURT: Okay. And then before we turn back to
21 Aurobindo --

22 THE COURT REPORTER: Your Honor, I apologize. You're
23 breaking up terribly now. I don't know if somebody logged on
24 that's interfering with you, but right now you're breaking up.

25 THE COURT: Whoever's not speaking, can you please put

1 your phone on mute so the interference can stop. Thank you.

2 Torrent, is there plaintiffs who want to speak to
3 Torrent?

4 MR. NIGH: Yes, Your Honor. This is Daniel Nigh for
5 the plaintiffs.

6 We have reached an agreement as to the 12 witnesses
7 that we're going to take. The way that ours looks --
8 unfortunately, we don't have a chart to send to you because we
9 have reached a lot of this agreement over yesterday and early
10 this afternoon, but we have 12 witnesses. Amongst those 12,
11 there are four that are 30(b)(6). Two of them overlap. So by
12 that I mean there are -- there are one, two, three, four, five,
13 six -- there are nine that are fact witnesses only, there are
14 two that are 30(b)(6) only, and then there are two that are
15 both fact and 30(b)(6).

16 THE COURT: Okay.

17 MR. NIGH: So with that, we've agreed on those. We've
18 agreed on dates for nearly all of the 12 proposed, except for
19 three of them are former employees and we've agreed with
20 Torrent that Torrent doesn't represent the former employees at
21 this time and that we will go ahead and subpoena those former
22 employees.

23 We -- our one level of dispute is on the four
24 30(b)(6) deposition dates -- I mean, not the dates but the
25 times. So we have four 30(b)(6) deponents. Their names are

1 Reddy Naravatla, Kelly Gegenheimer, Sushil Jaiswal and
2 Maitreyee Mukherji. The defendants have proposed a total of 15
3 hours for all depositions. We, on the flip side, believe that
4 we should allocate an amount of time for each of these.

5 In terms of their 30(b)(6) testimony, Reddy Naravatla
6 is just a 30(b)(6) and that does not overlap with fact. And so
7 we believe that we should have a total of two days for that
8 witness.

9 Kelly Gegenheimer is an overlapping witness such that
10 it's a fact witness plus a 30(b)(6). There aren't as many
11 topics with that witness, so we would propose -- as many
12 30(b)(6) topics, so we would propose one and a half days for
13 Kelly Gegenheimer.

14 Then there is Sushil Jaiswal, and there are many
15 topics, in fact, the majority of topics in terms of 30(b)(6)
16 notice that we propounded, many of those topics that they are
17 putting up Jaiswal for. So we, actually -- this is the one
18 that we need the most time on, and we propose a total of two
19 and a half days for Jaiswal.

20 And then for Mukherji, there -- this is a -- just a
21 30(b)(6) only and not a fact witness, so we just propose the
22 one day on Mukherji for those 30(b)(6) topics.

23 THE COURT: So my math is that's a total of seven
24 days; am I right, Mr. Nigh?

25 MR. NIGH: Yes.

1 THE COURT: A question before we turn to Torrent. Is
2 Torrent in any materially different position in this case than
3 Mylan? Because in Mylan's case, the Court ordered a total of
4 seven and a half days. Is Torrent, again, to repeat, in a
5 materially different position or similar position as Mylan?

6 Mr. Nigh, did you hear me?

7 MR. NIGH: I can hear you. I apologize. I -- I think
8 that they are fairly similar between Mylan and Torrent in terms
9 of the number of topics that need to be covered. Torrent is a
10 finished dose manufacturer but also is receiving their product
11 from ZHP and certainly have, you know, several interesting, you
12 know, topics and issues and things of that nature. Mylan is a
13 API manufacturer. But, overall, I think that they're, in terms
14 of the amount of testimony that we need and the documents and
15 sorting the amount of time would be similar between the two for
16 30(b)(6) testimony.

17 THE COURT: Okay. Let's hear from Torrent's counsel.
18 Plaintiffs are proposing seven days so 49 hours and Torrent has
19 proposed 15 hours.

20 MS. NAGLE: Hi, Your Honor. This is Brittney Nagle on
21 behalf of Torrent.

22 So I would just ask that, you know, similar to the
23 Teva defendants, that Your Honor tables this for tonight and
24 lets us continue to work with the plaintiffs.

25 So as of this afternoon, the disagreement was that we

1 had proposed 15 hours and plaintiffs had actually proposed 25
2 hours to be allocated among the four 30(b)(6). And to be
3 clear, when I say 15 and 25, that is just purely 30(b)(6).
4 That does not include the seven hours for fact testimony for
5 those that are dually designated.

6 And then I spoke to plaintiffs' counsel right before
7 this call and I received a proposal at about ten past four with
8 a breakdown of, again, just 30(b)(6) testimony, not including
9 the fact hours for dually designated witnesses, that adds up to
10 30 hours. So a little bit higher than where we were this
11 afternoon and certainly a lot lower than, you know, the numbers
12 we're throwing out now.

13 So I would just ask Your Honor that, you know, given
14 that we haven't gotten a chance, you know, on our end to circle
15 up and then to even broach the subject with plaintiffs and see
16 if we could come to an agreement, I would ask that Your Honor
17 defer on making any rulings tonight and let us continue to work
18 this out.

19 THE COURT: That's perfectly fine with me if Mr. Nigh
20 agrees.

21 MR. NIGH: Your Honor, I agree with that proposal.

22 THE COURT: Okay. So we'll table Torrent.

23 The only party left, which we'll circle back on, is
24 Aurobindo. Have we tracked down the attorneys who are going to
25 address that issue?

1 MR. HONIK: Your Honor, this is Ruben Honik. I
2 apologize for coming on the call so very late. I just got on
3 in the last four or five minutes. And myself and Mr. Oberfeld
4 I think are prepared to address Aurobindo.

5 THE COURT: Okay. So why don't you tell me what
6 you -- what the dispute is.

7 MR. HONIK: Your Honor, the dispute is about the
8 number of individuals and when we're to commence the 30(b)(6)
9 witnesses. Aurobindo has offered the 30(b)(6) witnesses only
10 beginning March 22nd. And as I'm sure has been covered earlier
11 in this conference and before, I mean, that just puts us in a
12 -- in an untenable position.

13 So issue number one is ensuring that we get some of
14 these witnesses at the earliest possible juncture and certainly
15 no later than the beginning of February, if possible.

16 THE COURT: That's easy.

17 What's the second issue.

18 MR. HONIK: The second issue, Your Honor, concerns the
19 individual witnesses. There were originally 16 identified.
20 It's been represented that six of them are former employees and
21 we understand Aurobindo may not have control over them; and for
22 reasons related to how they appeared in documents that we've
23 reviewed, there were two that were listed twice. So there's a
24 net eight individual witnesses that we propose taking, and,
25 simply stated, we haven't gotten any dates from Aurobindo and

1 we've included the eight in our proposed schedule that was
2 Exhibit -- sent in as an exhibit. I believe, unfortunately,
3 March was excluded but we -- we selected dates that were
4 acceptable from our standpoint for the eight individual
5 witnesses and would ask the Court to order them.

6 THE COURT: Are these eight witnesses, are they
7 American witnesses?

8 MR. HONIK: As I understand it, but I could -- I could
9 be corrected, they're Indian nationals that Aurobindo has
10 confirmed can be produced.

11 THE COURT: Are they in the United States or India?

12 MR. HONIK: To the best of my knowledge, they're all
13 in India; but, again, I --

14 MS. HEINZ: Your Honor, this is Jessica for Aurobindo.
15 They are all in the U.S.

16 THE COURT: Okay. That's even better.

17 MS. HEINZ: Your Honor --

18 THE COURT: I'm sorry. Is the issue -- put apart the
19 dates of the depositions. Is the issue whether plaintiff is
20 going to be permitted to take the depositions of these eight
21 individuals? Is that what the dispute is?

22 MR. HONIK: I don't believe that's the case.

23 MS. HEINZ: Your Honor, I have been meeting and
24 conferring with the plaintiffs. I wish that we could have done
25 so earlier. I actually just received this list of additional

1 witnesses last Thursday. I initially -- when I designated my
2 30(b)(6) witnesses, I did receive a request to propose earlier
3 dates. I have been looking into that and I haven't done so
4 yet. But when I spoke with plaintiffs' counsel just yesterday,
5 I told them that I do think we're going to be able to reach an
6 agreement on producing some of these eight fact witnesses that
7 they have proposed and I think we're going to be able to
8 propose dates in February for some of those that we agree on,
9 and I think we can also provide some earlier dates in March for
10 the 30(b)(6) witnesses as well.

11 I would just ask the Court that we be granted the
12 opportunity to continue to meet and confer with the plaintiffs.
13 We just -- you know, after I received the request for earlier
14 dates, I did offer time to meet and confer with the plaintiffs
15 and would have thought that maybe we could discuss these
16 witnesses at that time. I didn't receive a response to my
17 proposed dates to meet and confer, and then I got this list
18 last Thursday and I, again, asked to meet and confer with
19 counsel, which we did yesterday. And then shortly before the
20 conference call, I think within the hour before the conference
21 call, you know, counsel reached out to me again with some
22 additional proposed dates for the witnesses.

23 So I would just ask that we be granted an opportunity
24 to continue to meet and confer on this. You know, I think that
25 the Court's rulings so far today have been very helpful and

1 we'd just ask for some more time to reach an agreement with the
2 plaintiffs. I'm confident that we're going to be able to work
3 something out.

4 THE COURT: Before we get to that, is there also a
5 dispute about the length of the 30(b)(6) depositions like there
6 was with some other parties?

7 MR. HONIK: Your Honor, this is Ruben Honik.

8 I would say that there has been some dispute.
9 Inasmuch as I haven't been on this call, I don't know whether
10 there's been some guidance from the Court; but because there is
11 disproportionality among the 30(b)(6) designees in terms of
12 number of topics, we had proposed that some of the witnesses,
13 for example, be set aside for two days and I don't believe we
14 reached agreement with counsel on that but perhaps it exists
15 now.

16 THE COURT: How many total days are you proposing that
17 it would take for Aurobindo's 30(b)(6) depositions?

18 MS. HEINZ: So we -- I apologize.

19 MR. HONIK: Go ahead, Jessica.

20 MS. HEINZ: I misheard you, Judge. I thought you said
21 Ms. Heinz. I apologize. Should I go --

22 MR. HONIK: Feel free -- feel free to jump in,
23 Jessica.

24 MS. HEINZ: Thanks, Ruben.

25 So we proposed, in terms of numbers of hours for our

1 three 30(b)(6) witnesses, we proposed 21 hours, Your Honor,
2 which is seven days -- I mean, I apologize, three days of seven
3 hours.

4 THE COURT: And, Mr. Honik, what do you propose?

5 MR. HONIK: Your Honor, if you look at the exhibits
6 that we sent into the Court, Steven Lucas is the first of the
7 30(b)(6)'s -- and, Andrew, if you're on the call, please
8 correct me if I'm any way wrong -- two days for Mr. Lucas,
9 given the number of topics assigned to him, two days for Blessy
10 Johns, given the number of topics assigned there, and two and a
11 half days for Sanjay Singh, given the overwhelming number of
12 topics assigned to Mr. Singh.

13 THE COURT: Well, counsel, I'm going to take your
14 guidance. It seems to the Court there's two issues outstanding
15 --

16 THE COURT REPORTER: Excuse me, Your Honor. Your
17 Honor, excuse me. You're breaking up again. I'm unable to
18 hear you. "It seems to the Court there's two issues
19 outstanding."

20 THE COURT: It seems to the Court there's two issues
21 outstanding because you apparently reached a meeting of the
22 minds that these eight individuals are going to be deposed.
23 One issue is when the depositions are going to be taken; and,
24 two, the length of the 30(b)(6) depositions. I'm taking
25 guidance --

1 MR. HONIK: That's correct.

2 THE COURT: I'm taking guidance from the parties. If
3 you want me to rule on this issue now, I will; I'm prepared to
4 do that. I'm prepared to order that Aurobindo produce all of
5 its witnesses in February because we've been through this how
6 many times, pushing all these depositions back to March. It's
7 just not fair.

8 So do you want me to address and rule on when the
9 depositions are going to be taken and the length of the
10 30(b)(6) depositions or do you want to defer and work it out
11 amongst yourselves? You tell me what you want to do.

12 MR. HONIK: Your Honor, I've been late to today's
13 conference, and, again, I apologize because it sounds like
14 you've given considerable guidance. I think hearing Jessica as
15 I have today, I would -- I would prefer to have a very short
16 window of a day or two to try to have a meeting of minds
17 between counsel, but recognizing that if we don't that there's
18 some, you know, fall-back opportunity to have the Court help
19 the process move forward.

20 THE COURT: Torrent, is that -- sorry. Aurobindo, is
21 that what you want, too?

22 MS. HEINZ: Your Honor, I appreciate what Ruben has
23 said and, you know, that's fine with me. However -- and I
24 understand that Ruben hasn't been on the call this whole time
25 but I would just ask that we don't have a -- any sort of limit

1 on us set by the Court since that wasn't done for the other
2 defendants that are going to continue to meet and confer.

3 THE COURT: I don't know what you mean by a limit,
4 counsel.

5 MS. HEINZ: I'm referring to Ruben's request for a
6 short window of time, I suppose, to meet, confer and get back
7 to the Court. I don't think an order on that is necessary. I
8 think that we're going to be able to work this out.

9 MR. HONIK: Well, Your Honor, hope springs eternal but
10 my only -- the only point I was trying to make is that we're
11 already pretty deep into January and if we're to get ready for
12 depositions, a lot of them occurring in February, I just want
13 to know, you know, where we stand sooner than later. So, for
14 example, if we're not able to have a meeting of minds by, say,
15 Monday of next week, I'd like to be able to submit to the Court
16 a letter or something advising the Court where we are and get
17 guidance to the extent that we can't reach agreement.

18 THE COURT: I'm not putting any constraint, and never
19 have, when the parties can raise disputes with the Court. The
20 only comment I'll make is Aurobindo is saying it wants time to
21 work this out. What have the parties been doing the last six
22 months when they knew depositions were going to start in
23 January? And the parties wait until the 11th hour plus 59
24 minutes to start to roll up their sleeves and talk seriously
25 about this issue. So it's perfectly understandable why

1 plaintiff would want a day or two, at least; but if you want
2 time to work it out, you got it.

3 So as far as the Court's agenda is concerned, it has
4 addressed all of the issues that it had on its agenda. We've
5 laboriously gone through the deposition scheduling issue for
6 ZHP, Mylan, Teva, Aurobindo, Hetero and Torrent. I don't have
7 any other issues on my agenda before I excuse myself.

8 Are there any other issues the parties want to raise
9 while I'm on the phone?

10 MR. SLATER: Your Honor --

11 MR. GOLDBERG: Your Honor, this is -- go ahead, Adam.

12 MR. SLATER: I don't want to interrupt you. Go ahead.

13 MR. GOLDBERG: Your Honor, this is Seth Goldberg.

14 Defendants do not have any other issues to raise today.

15 I did want to, on behalf of defendants, thank Your
16 Honor for all of the work you put in with us on this case over
17 the last two years. It's been a great experience to be working
18 with you and so closely with you, especially on a biweekly
19 basis that Your Honor has -- the schedule that Your Honor has
20 had us on has really given us a chance to work very closely
21 with you and I think I speak for all defendants in saying that
22 we truly enjoyed and appreciated the experience. So thank you
23 very much.

24 And I'll open it to any of my colleagues who might
25 want to weigh in as well.

1 MR. SLATER: Hello, Your Honor. Adam Slater. Nothing
2 else for the plaintiffs on this hearing.

3 I'm sure everybody on the call would have a lot of
4 very nice things to say to you. I'm glad that I had an
5 opportunity today to whine to you as I've done for years. I
6 hope -- I hope -- you know, I'm going to miss whining to you in
7 the future in this capacity in this case and, you know, there's
8 nothing I can really say other than, you know, tremendous
9 respect and thanks for everything that you've done.

10 THE COURT: Well, I thank you for the kind words,
11 counsel. It was a pleasure to work with all of you. And, of
12 course, we've had our differences over time, which is to be
13 expected, but as far as I'm concerned, at all relevant times
14 everyone, on both sides of the V, acted in a thoroughly
15 professional manner and is a credit to their clients and the
16 Court and respect for the Court, and it was just a pleasure.

17 So I'm going to sign off. I'm going to -- I don't
18 think it's appropriate for me to be on the call while you talk
19 with the Special Master. I don't think this call will
20 disconnect; but if it does, just call back in. And good luck
21 to you all. And I'm going to put together an order confirming
22 the rulings today.

23 Thank you very much everybody. We're adjourned. I'm
24 adjourned.

25 MR. GOLDBERG: Thank you, Your Honor.

1 (Judge Schneider leaves the teleconference.)

2 JUDGE VANASKIE: All right. Can you all hear me?

3 This is Tom Vanaskie.

4 I want to make sure we have everything on the record.
5 And I also want to ask Camille, I intend to follow the schedule
6 that Judge Schneider had set in this matter and Judge Kugler
7 had set in this matter with calls every other -- well, it's not
8 every two weeks but in the middle of the month and the end of
9 the month, the second Wednesday and the last Wednesday of the
10 month, unless counsel disagree with that schedule.

11 So let me ask Mr. Slater, what's your view?

12 MR. SLATER: Hello, Your Honor. My view is if we can
13 maintain what we've been doing, it's certainly been very
14 helpful to the parties to be able to continually get issues
15 resolved timely. So I would certainly, for the plaintiffs,
16 advocate to continue it; and I suppose if some miracle happens
17 and we have no issues for you, we can let you know.

18 JUDGE VANASKIE: Right, exactly. That would be fine.

19 Mr. Goldberg, what do you think?

20 MR. GOLDBERG: Thank you, Your Honor. You know, I
21 would certainly like to discuss this with my colleagues but,
22 you know, I think that we had raised with the Court before your
23 appointment the fact that we thought that the schedule of
24 biweekly hearings was potentially too much and unnecessary and
25 would also result in, you know, an increased cost, not just

1 work time but time for Your Honor, respectfully. Obviously, we
2 are -- you know, we've got a lot of resources here but, you
3 know, we just haven't had a chance -- we thought Your Honor
4 would give us what you -- your proposal and I think we would
5 like to at least be able to confer among ourselves on the
6 defense side. Because we also understand that there is going
7 to be a Magistrate appointed that were assigned to the case, I
8 think it was going to be Magistrate Judge Williams; and
9 depending on how the issues would be allocated as between you
10 and Magistrate Williams, we would like to then determine how
11 often we would meet with Your Honor.

12 JUDGE VANASKIE: I think I can provide some clarity
13 there.

14 My understanding is that Judge Kugler would like me to
15 resolve all -- or address all discovery issues, issue orders
16 that are within the purview of a Special Master, and then if
17 there's a challenge to those orders, it be handled by Judge
18 Williams. The expectation was that she would not be involved
19 in these conference calls for that reason, that she would be
20 the one he would ask to take up any challenges to any discovery
21 orders that may be issued. Now, that's my understanding going
22 forward.

23 I certainly would want to give you the opportunity to
24 confer to see if you have another schedule to propose or
25 whether you believe that now that you're moving into

1 depositions that the -- there wouldn't be a necessity for this
2 call, this middle-of-the-month call. But my experience in
3 handling complex discovery matters is that the calls actually
4 facilitate resolution and expedite the handling of matters and
5 that's why I propose to stay on the same schedule. But if -- I
6 think you should have the opportunity to confer and let me know
7 whether you'd like to stay on the same schedule and I'll look
8 forward to getting your views. We can proceed on that basis
9 right now.

10 There is a call scheduled for the 27th of January and
11 I would expect that we would conduct that call as scheduled
12 with me standing in the shoes of Judge Schneider, big shoes to
13 fill for sure, in terms of how he's handled this matter, but
14 that's my expectation going forward in terms of the next
15 conference call would be on the 27th. And I can confer, as
16 well, with Judge Kugler just to get his views again, but that's
17 my understanding of how he was expecting you to proceed here.

18 MR. GOLDBERG: Thank you, Your Honor. We will confer
19 as a group of defendants. And as Your Honor may know, it's a
20 rather large group, we've got more than 50 defendants that are
21 litigating in this action, and I do appreciate the opportunity
22 to discuss it with them and then come back to Your Honor.

23 If, and maybe, maybe we should say that we will come
24 back to Your Honor if for some reason we have a different
25 proposal than what Your Honor has suggested.

1 JUDGE VANASKIE: Okay. That's fine. That will be
2 fine. Thank you.

3 What I wanted to ask is that there were several issues
4 that the parties are going to continue to meet and confer on,
5 the ones towards the tail end of the conference call today. As
6 I understand it, Teva will be getting back in terms of whether
7 they've reached an agreement, Torrent and Aurobindo, and I
8 would hope that you would let me know when you've reached
9 agreement simply by sending -- either filing something of
10 record, I will be monitoring the docket, or emailing it to me
11 at my office address. And let me know if that's a problem.
12 Because we could do everything through the Court docket, and
13 I'd prefer that it all be done through the Court docket and on
14 the record, but I would ask that you let me know and certainly
15 I'm hopeful that you all have those resolved prior to the 27th
16 of January; but if not, we'll take it up then. Consistent with
17 what Judge Schneider indicated, I will not impose any deadline
18 by when you must let me know whether you've reached a
19 resolution or that you're deadlocked. But just please let me
20 know either by putting it on the record, on the docket, or by
21 email to my office address.

22 The other point is that at the beginning of our call,
23 Judge Schneider identified what he believed to be the
24 outstanding matters that haven't been resolved yet, and some
25 are teed up by way of his order of January 11th where he's

1 identified certain deadlines for filing of briefs that deal
2 with discovery issues. So I will be addressing those and we'll
3 follow the schedule that he has set with respect to those
4 issues.

5 The motions to amend I believe will be not handled by
6 me but I'm going to confer with Judge Kugler on that.

7 Is there anything else you wanted to discuss with me
8 today?

9 MR. SLATER: Your Honor, it's Adam Slater.

10 Our normal way of proceeding was, so that you would --
11 so that Judge Schneider would not be inundated with emails or
12 correspondence, he had directed us that he should only be
13 communicated with directly through liaison counsel. I just
14 wanted to confirm if you'd prefer us to continue that practice
15 that we filter anything through liaison to you so that you,
16 again, don't get inundated with random emails and phone calls.

17 JUDGE VANASKIE: Yes, Mr. Slater, that's how I would
18 like to proceed, through liaison counsel and not individual
19 counsel inundating me.

20 MR. SLATER: Fair enough. I think everything else you
21 said makes sense and, you know, we look forward to working with
22 you.

23 JUDGE VANASKIE: Yes, I look forward to working with
24 you all. You know, I've had the ability to listen in on the
25 last few conferences and I see how professional everybody is

1 approaching this matter and that's reassuring for me taking on
2 this assignment.

3 Anything else on the defense side?

4 MR. GOLDBERG: Your Honor, there are two things.
5 First, in the past few days, as we've been getting closer to
6 the depositions, I've noticed that plaintiffs have been filing
7 deposition notices. Is that something -- and it was something
8 we were going to raise with Judge Schneider earlier but then he
9 stepped -- he decided he was going to turn it over to you
10 today. But is that something Your Honor would like us to be
11 doing or is there -- is there a reason that we would be filing
12 deposition notices?

13 JUDGE VANASKIE: Well, let me hear from Mr. Slater on
14 that.

15 MR. SLATER: Yes, Your Honor. My understanding was,
16 especially in the context of an MDL where there are lawyers who
17 are not involved in plaintiffs' leadership and there's lawyers,
18 you know, around the country, that we were required to file a
19 deposition notice and have it on ECF so all parties in the
20 litigation would be on notice that depositions were taking
21 place. I wasn't sure -- I didn't understand that that was
22 something that was controversial.

23 JUDGE VANASKIE: Mr. Goldberg.

24 MR. GOLDBERG: It's not controversial. We just wanted
25 to get clarity from the Court. We were going to ask Judge

1 Schneider. I just wanted to have that clarity with the Court
2 because it's just another step. And if that's -- if that's
3 what has been ordered, we will do that. We just wanted to work
4 out that technicality.

5 JUDGE VANASKIE: I think it makes sense what Mr.
6 Slater had to say in terms of providing notice in a matter of
7 this complexity and nationwide concern. So I would say that
8 yes, the deposition notices should continue to be filed.

9 MR. GOLDBERG: Thank you.

10 JUDGE VANASKIE: All right. Anything else?

11 MR. GOLDBERG: No, Your Honor.

12 JUDGE VANASKIE: All right. Anything else on behalf
13 of the plaintiffs?

14 MR. SLATER: Nothing for the plaintiffs, Your Honor.

15 JUDGE VANASKIE: All right. Mr. Goldberg, I'll look
16 forward to hearing from you in terms of how I proposed we
17 proceed going forward; but we will have the call on the 27th of
18 January and we'll be using the same dial-in number. The Court
19 has made that available to us to continue to use. And,
20 Camille, I'm hopeful that we can continue to use you as the
21 court reporter.

22 THE COURT REPORTER: Yes, Judge.

23 JUDGE VANASKIE: Okay. Thank you all very much. Have
24 a good night.

25 MR. GOLDBERG: Thank you, Your Honor. You as well.

1 JUDGE VANASKIE: Bye-bye.

2 (The proceedings concluded at 5:45 p.m.)

3 - - - - -

4

5

6 I certify that the foregoing is a correct transcript
7 from the record of proceedings in the above-entitled matter.

8

9 /S/ Camille Pedano, CCR, CRR, CRC, RPR
10 Court Reporter/Transcriber

11 01/14/2021
12 Date

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